

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV119-1-MU
3:02CR152-MU

THOMAS WILLIAM FIELDER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion to Reinstate, filed October 19, 2005.

On March 17, 2005, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence asserting, among other things, that, against his wishes, his counsel failed to file a direct appeal. On April 5, 2005, this Court granted Petitioner's Motion to Vacate on his ineffective assistance of counsel claim based upon his counsel's failure to file an appeal. The Court also ordered that Petitioner's criminal judgment be vacated due to his attorney's failure to file a direct appeal; a new criminal judgment with the same sentence and conditions be prepared; and that the Clerk file a Notice of Appeal for Petitioner.

Petitioner has filed a motion asserting that contrary to the directive of this Court's April 5, 2005, Order, no notice of appeal was ever filed. In reviewing this Court's records, it appears that due to court error no notice of appeal was filed. To place Petitioner in the position he would have been absent court error, the Court will re-enter Petitioner's criminal judgment.

THEREFORE, IT IS HEREBY ORDERED that:

1. Petitioner's Motion to Reinstate is **GRANTED**;
2. Petitioner's criminal judgment is vacated;
3. The Clerk is directed to prepare a new criminal judgment with the same sentence and conditions;
4. The Clerk is directed to file a Notice of Appeal for Petitioner in his criminal case.

Signed: October 25, 2005

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

